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PUBLIC VERSION

7 Attorneys for Plaintiff
VERIGY US, INC.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

12 || VERIGY US, INC, a Delaware Corporation

Case No. C07-04330 RMW (HRL)

13 Plaintiff,

**DECLARATION OF MICHAEL W.
STEBBINS IN SUPPORT OF OPPOSITION
TO DEFENDANTS' MOTION FOR
SUMMARY AJUDICATION AND FOR
MODIFICATION OF PRELIMINARY
INJUNCTION**

15 ROMI OMAR MAYDER, an individual;
16 WESLEY MAYDER, an individual; SILICON
TEST SYSTEMS, INC., a California Corporation;
17 and SILICON TEST SOLUTIONS, LLC, a
California Limited Liability Corporation,
inclusive.

Date: September 5, 2008
Time: 9:00 am
Ctrm.: 6
Judge: Hon. Ronald M. Wh

Defendants

Complaint Filed: August 22, 2007
Trial Date: None Set

AND RELATED CROSS ACTIONS

PUBLIC VERSION OF HIGHLY CONFIDENTIAL – ATTORNEYS EYES ONLY

DOCUMENT SUBMITTED UNDER SEAL

1 I, Michael W. Stebbins, declare as follows:

2 1. I am an attorney licensed to practice law before all of the courts of the State of
 3 California. I am a partner with the law firm of Bergeson, LLP, counsel of record for Plaintiff
 4 Verigy US, Inc. ("Verigy") in the above-captioned action. I have personal knowledge of the facts
 5 set forth in this declaration, and, if called to do so, I could and would competently testify thereto.

6 2. I submit this declaration in support of Verigy's Opposition to Defendants' Motion
 7 for Summary Adjudication and Motion for Modification of Preliminary Injunction.

8 3. Attached hereto as **Exhibit A** is a true and correct copy of an e-mail, dated January
 9 24, 2008, from Romi Mayder to Chris Straube, Honeywell's manufacturer's representative which
 10 lists the five non-functioning features of Defendants' ASIC. This document was produced by Mr.
 11 Straube and was Exhibit 186 to his deposition taken on July 31 and August 14, 2008.

12 4. Attached hereto as **Exhibit B** is a true and correct copy of an e-mail string, dated
 13 July 17, 2008, between Romi Mayder, Chris Straube and Honeywell representatives which
 14 attaches a new proposal for Phase II of the development and manufacture of Defendants' product.
 15 This document was produced by Defendants, has been marked as STSI 000292-STSI 000305 and
 16 was Exhibit 195 to the Straube Deposition, taken on July 31 and August 14, 2008. The page
 17 labeled STSI 000295 is a timeline for the Phase II development indicating that the parts will be
 18 available for shipping on December 12, 2008.

19 5. Attached hereto as **Exhibit C** is a true and correct copy of the January 15, 2008
 20 Transcript of Preliminary Injunction Hearing.

21 6. Attached hereto as **Exhibit D** is a true and correct copy of the April 11, 2008
 22 Transcript of Contempt Hearing.

23 I declare under penalty of perjury under the laws of the United States of America that the
 24 foregoing is true and correct and that this declaration was executed this 15th day of August, 2008
 25 at San Jose, California.

26 _____
 27 /s/
 28 Michael W. Stebbins

EXHIBIT A

**HIGHLY
CONFIDENTIAL**

**ATTORNEYS EYES
ONLY**

FILED UNDER SEAL

EXHIBIT B

**HIGHLY
CONFIDENTIAL**

**ATTORNEYS EYES
ONLY**

FILED UNDER SEAL

EXHIBIT C

**HIGHLY
CONFIDENTIAL**

**ATTORNEYS EYES
ONLY**

FILED UNDER SEAL

EXHIBIT D

1 UNITED STATES DISTRICT COURT
2 NORTHERN DISTRICT OF CALIFORNIA
3 SAN JOSE DIVISION
4

5 VERIGY US, INC., A) C-07-04330 RMW
6 DELAWARE CORPORATION,)
7 PLAINTIFF,) SAN JOSE, CALIFORNIA
8 VS.) APRIL 11, 2008
9 ROMI OMAR MAYDER, AN)
10 INDIVIDUAL; WESLEY)
11 MAYDER, AN INDIVIDUAL;)
12 SILICON TEST SYSTEMS,)
13 INC., A CALIFORNIA)
14 CORPORATION; AND SILICON)
15 TEST SOLUTIONS, LLC, A)
CALIFORNIA LIMITED)
LIABILITY CORPORATION,)
INCLUSIVE,)
DEFENDANTS.)
)

16
17 TRANSCRIPT OF PROCEEDINGS
18 BEFORE THE HONORABLE RONALD M. WHYTE
UNITED STATES DISTRICT JUDGE
19

A P P E A R A N C E S:

20 FOR THE PLAINTIFF: BERGESON, LLP
21 BY: MINDY M. MORTON
303 ALMADEN BOULEVARD, SUITE 500
22 SAN JOSE, CALIFORNIA 95110
23

APPEARANCES CONTINUED ON NEXT PAGE

24
25 OFFICIAL COURT REPORTER: LEE-ANNE SHORTRIDGE, CSR, CRR
CERTIFICATE NUMBER 9595

1 APPEARANCES (CONTINUED)

2
3 FOR THE DEFENDANT: MOUNT & STOELKER, P.C.
4 BY: DANIEL S. MOUNT,
DAN H. FINGERMAN, AND
KEVIN M. PASQUINELLI
5 333 WEST SAN CARLOS STREET
SUITE 1650
6 SAN JOSE, CALIFORNIA 95110
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10:03:09 1 THE COURT: WHAT CASE DO YOU FEEL SAYS
10:03:13 2 THAT IT'S PUNITIVE TO EXTEND AN OLD ORDER?
10:03:16 3 MR. MOUNT: WELL, YOU CANNOT -- ACTUALLY,
10:03:19 4 MR. FINGERMAN MIGHT HELP ME WITH THAT, YOUR HONOR.
10:03:22 5 HE HAD BRIEFED THAT.
10:03:23 6 I BELIEVE IT WAS --
10:03:26 7 MR. FINGERMAN: IT WAS IN, IN HICKS
10:03:32 8 VERSUS FEIOCK CITED IN OUR BRIEF.
10:03:32 9 THE COURT: WHAT'S THE SITE?
10:03:34 10 MR. FINGERMAN: I'M SORRY?
10:03:35 11 THE COURT: WHAT'S THE SITE?
10:03:36 12 MR. FINGERMAN: IT WAS 485 U.S. 624, A
10:03:39 13 SUPREME COURT CASE IN 1988 WHERE THE COURT HELD
10:03:44 14 THAT A, A REMEDY HAVING ANY FIXED TERM WAS PUNITIVE
10:03:50 15 RATHER THAN COMPENSATORY.
10:03:53 16 AND IT WAS ALSO NOT COERCIVE BECAUSE THE
10:03:55 17 FIXED TERM OF THE -- THE FIXED TERM OF THE, OF ANY
10:04:01 18 NEW INJUNCTION WOULD MEAN THAT THE DEFENDANTS WOULD
10:04:04 19 NOT HAVE AN OPPORTUNITY TO AVOID IT.
10:04:06 20 AND THERE HASN'T BEEN ANY SHOWING IN THE
10:04:09 21 PAPERS OF ANY HARM AND THERE HASN'T BEEN ANY
10:04:12 22 SHOWING THAT ANY SPECIFIC DURATION OF AN INJUNCTION
10:04:15 23 WOULD COMPENSATE ANY SPECIFIED HARM HERE.
10:04:20 24 THE COURT: OKAY.
10:04:23 25 MR. MOUNT: AND THE CASES THAT ARE RELIED

10:05:49 1 OUT, THAT IT WOULD BE PUNITIVE TO DELAY THE PERIOD
10:05:53 2 OF -- FOR THE PERIOD OF TIME THAT THEY GOT THE JUMP
10:06:01 3 ON THE RELEASE OF THEIR PRODUCT.

10:06:02 4 MR. MOUNT: WELL, BUT THE CHANGE OF IT,
10:06:04 5 TO BASE THAT ON A CONTEMPT IS THE PROBLEM, YOUR
10:06:07 6 HONOR.

10:06:09 7 EVEN IN THE MACOMB CASE WHERE SOMEONE
10:06:11 8 WANTED TO CHANGE THE SCOPE OF AN INJUNCTION, IN
10:06:13 9 MACOMB, WHICH, AGAIN, IS 336 U.S. 187, THE COURT
10:06:17 10 CONSIDERED THE NEW REQUEST AS AN APPLICATION TO
10:06:21 11 AMEND THE PLEADING.

10:06:23 12 THAT WAS A WAGE AND HOUR CASE AND THEY
10:06:25 13 WERE ALLOWED TO EXTEND THE DURATION, BUT THEY HAD
10:06:27 14 TO EFFECTIVELY TREAT IT AS THE FILING OF A NEW
10:06:31 15 ACTION AND A NEW RELIEF.

10:06:33 16 BUT LET ME GO BACK TO WHAT I THINK IS
10:06:35 17 MAYBE YOUR FUNDAMENTAL CONCERN, AND THAT IS THE
10:06:38 18 HEAD START.

10:06:39 19 YOUR HONOR, YOU MAY RECALL THAT YOU, YOU
10:06:41 20 LOOKED IN GREAT DETAIL AT WHAT AMOUNT OF BENEFIT
10:06:45 21 WAS OBTAINED BECAUSE OF THE AVAILABILITY OF
10:06:50 22 INFORMATION.

10:06:51 23 AND BY, BY ENJOINING ACTIVITY FOR FIVE
10:06:55 24 MONTHS -- WHICH WAS WELL BEYOND THE TWO WEEKS THAT
10:06:57 25 WE FELT THEIR EXPERT HAD ACKNOWLEDGED WAS THE OUTER

10:07:00 1 END, THEY ASKED FOR EIGHT MONTHS BECAUSE THEY
10:07:02 2 THOUGHT THAT IT WAS IN AN EIGHT MONTH PROCESS.
10:07:05 3 BUT YOU CAREFULLY WENT THROUGH THAT AND
10:07:07 4 CAME TO A CONCLUSION THAT A FIVE MONTH HEAD START
10:07:10 5 WAS FAIR. YOU RECALL WE WORKED IN-HOUSE FOR A
10:07:12 6 NUMBER OF MONTHS. WE HAD ACCESS TO INFORMATION.
10:07:15 7 AND YOUR DETERMINATION THAT A FIVE MONTH HEAD START
10:07:18 8 SHOULD BE STOPPED IS WHAT YOU DID.
10:07:19 9 IT WAS A BALANCED -- IT WAS A BALANCING
10:07:21 10 THAT RELATED EXACTLY TO THE ISSUES CONCERNING
10:07:26 11 WHAT'S THE SCOPE OF THE PROTECTION, WHAT'S THE
10:07:27 12 SCOPE OF THE TRADE SECRET.
10:07:29 13 AND THAT SHOULDN'T BE UPSET NOW AND SAY,
10:07:31 14 WELL, I'M ANNOYED OR I BELIEVE THAT YOU'VE DONE
10:07:35 15 SOMETHING WRONG IN THIS CONTEMPT PROCEEDING AND,
10:07:38 16 THEREFORE, I'M GOING TO CHANGE MY ANALYSIS ABOUT
10:07:40 17 THE HEAD START ISSUE.
10:07:42 18 AT THE TIME YOU RULED ON THAT HEAD START,
10:07:44 19 YOUR HONOR, WE HAD ARGUED TO YOU THAT INTEL WAS
10:07:47 20 PRESENT AND HAD WANTED THIS PRODUCT. YOU WERE
10:07:49 21 FULLY AWARE, EVERYONE WAS FULLY AWARE THAT INTEL
10:07:52 22 WAS IN THE PICTURE.
10:07:53 23 AND THAT ANALYSIS DOESN'T CHANGE BECAUSE
10:07:56 24 OF THE CURRENT ARGUMENT.
10:07:58 25 THE COURT: SO IS IT YOUR ARGUMENT THAT

10:11:16 1 AND WE HAVE CRUSHED A COMPETITOR, WHICH WAS AN
10:11:18 2 EXAGGERATION AS WELL, YOUR HONOR.

10:11:20 3 BUT THAT'S A DIFFERENT QUESTION, HAPPILY
10:11:22 4 BRIEFED AND ARGUED LATER.

10:11:23 5 BUT IT SHOULDN'T INFLUENCE THE COURT NOW
10:11:25 6 IN TERMS OF TRYING TO ASSESS, WAS -- WERE THE
10:11:28 7 DEFENDANTS ON NOTICE OF SPECIFIC CLEAR BEHAVIOR
10:11:32 8 THAT WAS CLEARLY PROHIBITED, AND DID THEY VIOLATE
10:11:36 9 THAT WITH FULL KNOWLEDGE?

10:11:38 10 AND THAT'S WHERE I THINK THE COURT
10:11:41 11 DESERVES A SECOND LOOK AT, AGAIN, THE NATURE OF
10:11:45 12 WHAT'S SECRET, THAT YOU HAVE TO READ THE TRO IN THE
10:11:48 13 CONTEXT OF WHAT DOES THE PLAINTIFF CLAIMS ARE
10:11:51 14 SECRET, WHICH WAS MODIFIED.

10:11:52 15 AND RECALL THE VERY LENGTHY AND EXPANSIVE
10:11:54 16 LIST OF EXHIBITS.

10:11:55 17 BUT IN DIALOGUE AND IN THEIR FILINGS,
10:11:58 18 THEY ULTIMATELY ACKNOWLEDGED IT'S ONLY A
10:12:00 19 COMPILATION, WHICH EVEN THE COURT ACKNOWLEDGED AT
10:12:03 20 THE TIME OF THE INJUNCTION THAT IT'S ONLY A
10:12:04 21 COMPILATION.

10:12:05 22 AND, AGAIN, IF THE PLAINTIFFS DON'T SET
10:12:07 23 FORTH THE COMPENSATORY DAMAGE THAT THEY, THAT THEY
10:12:11 24 WOULD LIKE, IT'S NOT FOR THE COURT TO HAVE TO
10:12:14 25 REMEDY THAT FOR THEM.

10:12:16 1 THEY COULD HAVE COME IN AND SAID, HEY,
 10:12:19 2 BECAUSE OF THESE COMMUNICATIONS WHICH VIOLATED, OR
 10:12:21 3 BECAUSE THERE WAS USE OF THIS COMPILATION, WE
 10:12:23 4 SUFFERED A LOSS OF SALES OR WE SUFFERED A SPECIFIC
 10:12:27 5 DAMAGE, AND THEN THAT WOULD BE THE THING TO DO.

10:12:29 6 BUT NOT TO, TO -- NOT TO RAISE THAT BY
 10:12:33 7 REPLY OR OTHERWISE.

10:12:34 8 AND NOT TO ALSO SUGGEST -- THE OTHER
 10:12:36 9 THING LOGICALLY, YOUR HONOR, IT DOESN'T LOGICALLY
 10:12:39 10 FLOW THAT THE USE OF INFORMATION TO WHICH
 10:12:41 11 MR. MAYDER HAD ACCESS FOR A NUMBER OF MONTHS WHILE
 10:12:44 12 HE WORKED THERE, THAT YOU CAREFULLY BALANCED IN
 10:12:46 13 TERMS OF THE SCOPE AND THE ABILITY TO DESIGN AROUND
 10:12:48 14 AND SO ON, YOU DON'T JUST CHANGE THAT AS A MEANS OF
 10:12:52 15 PUNISHING US OR MAKING US COMPENSATE IN A DIFFERENT
 10:12:55 16 FASHION.

10:12:56 17 THAT -- THE ANALYSIS YOU DID IN YOUR
 10:12:58 18 PRELIMINARY INJUNCTION, YOUR HONOR, WAS CAREFUL AND
 10:13:00 19 THOUGHTFUL AND VERY GENEROUS TO VERIGY.

10:13:04 20 BUT IT SHOULDN'T BE -- IT SHOULDN'T BE
 10:13:06 21 UPSET NOW SIMPLY BECAUSE THEY HAVE SUGGESTED THAT,
 10:13:09 22 THAT SOME COMPONENTS OF THAT COMPILATION FOUND
 10:13:15 23 THEIR WAY INTO, INTO USEFUL ACTIVITIES OF THE
 10:13:17 24 DEFENDANTS.

10:13:18 25 THE COURT: OKAY. THANK YOU.